

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JAN 19 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE STEVEN R.

) 2 CA-JV 2009-0097

) DEPARTMENT B

) MEMORANDUM DECISION

) Not for Publication

) Rule 28, Rules of Civil

) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17481003

Honorable Suzanna S. Cuneo, Judge Pro Tempore

AFFIRMED

Barbara LaWall, Pima County Attorney
By James M. Coughlin

Tucson
Attorneys for State

Robert J. Hirsh, Pima County Public Defender
By Julie M. Levitt-Guren

Tucson
Attorneys for Minor

V Á S Q U E Z, Judge.

¶1 In this appeal, the State of Arizona challenges the juvenile court’s refusal to order Steven R. to pay restitution after the court adjudicated him delinquent. We review the juvenile court’s order for an abuse of discretion. *In re Richard B.*, 216 Ariz. 127, ¶ 12, 163 P.3d 1077, 1080 (App. 2007). “In exercising its discretion, the juvenile court is not, however, authorized to misapply the law or a legal principle.” *In re Maricopa County Juv. Action No. JV-128676*, 177 Ariz. 352, 353, 868 P.2d 365, 366 (App. 1994). For the reasons stated below, we affirm.

¶2 In early December 2007, Steven was charged in a delinquency petition with three counts of second-degree burglary, two counts of criminal damage, and one count of theft by control. A few weeks later, Steven’s counsel moved for a competency evaluation. The juvenile court stayed the delinquency proceeding and ordered Steven evaluated by two doctors. Based on their reports, the court found Steven incompetent in June 2008. In November 2008, the juvenile court found Steven had been restored to competency and set a trial review hearing to address the December 2007 petition and seven other pending delinquency petitions. In January 2009, Steven admitted, with respect to this petition, having committed the alleged theft, criminal trespass, and one count of criminal damage, pursuant to the terms of an amended plea agreement. The agreement provided Steven could be ordered to pay restitution, providing a “restitution cap” of \$7,500 for all charges, “including dismissed” charges.

¶3 At the restitution hearing in August 2009, the state explained the victims, a husband and wife, had owned houses that had been vandalized by Steven and other juveniles; one was identified but not prosecuted and others were never identified. Windows and doors had been broken, an air conditioning unit had been stolen, and graffiti had been painted on the walls. The victims submitted an affidavit for about \$6,000 in damages in October 2007. Although it appears the exhibit was admitted into evidence, there is no such exhibit in our record. And, the state does not refer on appeal to the specifics purportedly contained in the affidavit and relies only on the transcript of the restitution hearing. Nor did the state request a transcript from the trial review hearing at which Steven admitted to having committed certain offenses.

¶4 The prosecutor stated at the restitution hearing that the husband victim had passed away and the wife was very ill at that time and not expected to survive. The victims' daughter, however, did not wish to waive the claim for restitution, insisting she needed the money because her parents did not have insurance coverage for acts of vandalism and had used their own funds to repair the property in order to try to rent the houses. The prosecutor suggested he was aware Steven's family could not pay restitution and noted that Steven, "a troubled kid," was only thirteen years of age, but, he pointed out, "we do have victims." The juvenile court questioned whether it was "realistic" to believe Steven or his family would pay restitution, adding that "ability to pay" is one of the relevant factors in considering whether to award restitution. The state pointed out, however, that the statute, presumably A.R.S. § 8-

344, authorizes the court to order “all or partial restitution.” The juvenile court refused to order Steven or his parents to pay restitution,

[b]ased on the length of time between the incident and today’s date, the inability of the State to prove responsibility for all of the people involved in the incident, the State’s inability to establish concretely the actual amount of restitution, the age of the minor and the chronic inability of both the minor and the family to pay restitution.

¶5 Section 8-344(A) provides that, when a juvenile is adjudicated delinquent and “after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, [the juvenile court] shall order the juvenile to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent or to the estate of the victim if the victim has died.” We review de novo legal issues concerning the meaning of statutes. *See In re Andrew C.*, 215 Ariz. 366, ¶ 6, 160 P.3d 687, 688 (App. 2007).

¶6 Our obligation is to effectuate the legislature’s intent in interpreting a statute, mindful that the best reflection of its intent is the statute’s plain language. *See Ballesteros v. Am. Standard Ins. Co.*, 572 Ariz. Adv. Rep. 22, ¶ 10 (Ct. App. Dec. 23, 2009). The plain language of § 8-344 seems to require the juvenile court to award at least partial restitution to a victim. And, a victim has a constitutional right to restitution. *See* Ariz. Const. art. II, § 2.1(A)(8) (victim of crime has right “to receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury”); *see also In re Ryan A.*, 202 Ariz. 19, ¶ 18, 39 P.3d 543, 548 (App. 2002) (“[T]he obligation for a

juvenile offender to pay full or partial restitution to a victim is mandatory.”). A court may order a juvenile to pay restitution for economic losses that would not have occurred but for the juvenile’s delinquent conduct and that are directly caused by that conduct. *See Andrew C.*, 215 Ariz. 366, ¶ 12, 160 P.3d at 689. But, evidence must be presented establishing that the victim’s loss relates directly to the juvenile’s delinquent conduct and the offense for which the juvenile was adjudicated delinquent. *In re Michelle G.*, 217 Ariz. 340, ¶ 10, 173 P.3d 1041, 1044 (App. 2008). Although the court may order a juvenile’s parents to pay restitution to a victim, if it does, it “shall order the juvenile to make either full or partial restitution, regardless of the juvenile’s insufficient earning capacity.” § 8-344(C). And, “[t]he court shall not consider the ability of the juvenile’s parents to pay restitution before making a restitution order.” *Id.* “The burden of proof applicable to restitution is proof by a preponderance of the evidence.” *In re Stephanie B.*, 204 Ariz. 466, ¶ 15, 65 P.3d 114, 118 (App. 2003).

¶7 Thus, it appears as a general principle that, based on the plain language of the statute, a trial court is required to award at least partial restitution to a victim. We are therefore troubled by the juvenile court’s decision not to order Steven to pay even partial restitution, in part because too much time had passed between the offense and the restitution hearing and because the court did not think it likely that the restitution would be paid, a conclusion based on the court’s independent knowledge about Steven and his family rather than the evidence in the record. Nevertheless, we cannot say the juvenile court abused its

discretion in refusing to order Steven to pay restitution. The court also found the state had not sustained its burden of proving the amount of restitution and establishing the economic loss was a direct consequence of Steven's offenses.¹ Nor did the court believe the state had sustained its burden of establishing the precise amount of restitution. Based on its comments during the restitution hearing, the court plainly found insufficient evidence connecting the damage with Steven and the offenses he had committed. The court noted that the property had been vandalized over a period of days, a number of individuals had been "[c]oming and going," and there was "too much chaos . . . to . . . peg it down." The court added, "I don't have a clue what that property looked like; I haven't a clue how many people were coming and going in and out of that place . . . it's not easy to peg down." Although Steven did not attend the restitution hearing, his counsel argued the amount was entirely unclear, noting a police "incident report" reflected that the victim husband initially had told police it did not appear anything had been missing. Counsel reiterated there were a number of people coming in and out of the properties and that it could not be determined how much of the damage Steven had caused.

¹Again, we note the absence of a transcript from the trial review hearing at which Steven admitted having committed various offenses as provided in the plea agreement. We note, too, the plea agreement provided a restitution cap and was intended to authorize restitution for dismissed charges as well. Nevertheless, no direct connection was made between the offenses Steven purportedly committed and the damage the victims had been claiming.

¶8 On the record before us, we cannot say the juvenile court abused its discretion by refusing to order Steven to pay restitution. We therefore affirm the disposition order.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge